United Nations E/C.19/2012/10

Economic and Social Council

Distr.: General
3 March 2012

Original: English

Permanent Forum on Indigenous Issues
Eleventh session
New York, 7-18 May 2012
Item 9 of the provisional agenda*
Future work of the Permanent Forum, including issues of the Economic and Social Council and emerging issues

Indigenous participatory mechanisms in the Arctic Council, the Circumpolar Inuit Declaration on Resource Development Principles in Inuit Nunaat and the Laponia management system

Note by the secretariat

Summary

At its tenth session in May 2011, the Permanent Forum decided to appoint Dalee Samoo Dorough, a member of the Forum, to conduct a study, as examples of good practice, of the indigenous participatory mechanisms in the Arctic Council, the Circumpolar Inuit Declaration on Resource Development Principles in Inuit Nunaat, and the Laponia management system, to be submitted to the eleventh session of the Permanent Forum.**

* E/C.19/2012/1.

** The author wishes to acknowledge the assistance of Carina Green, and Michael Teilus, Chair of Laponiatjuottjudus, for their elaboration of the Laponian World Heritage process.

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I. Introduction

1. The United Nations Declaration on the Rights of Indigenous Peoples[1] crystallizes many of the necessary standards needed to ensure the participation of indigenous peoples, including those within the Arctic region, in all matters that directly affect them.

2. The present study provides a preliminary review of "examples of good practice" of participation of Arctic indigenous peoples in the Arctic Council,[2] the Laponia management system and the principles outlined in the Circumpolar Inuit Declaration on Resource Development Principles in Inuit Nunaat. These three examples are reviewed against the backdrop of the relevant articles of the Declaration. Where appropriate, practices will be identified as being consistent or inconsistent with the Declaration, and conclusions and recommendations forwarded to remedy shortcomings.

3. Emerging from the overall international trend of acknowledging and accommodating the status and human rights of Arctic indigenous peoples has been the willingness of States to engage indigenous peoples and to resolve outstanding claims to lands, territories and resources, especially in Canada and Denmark (Greenland), although there has not been a uniform recognition of these rights. For example, in the state of Alaska in the United States of America, the Scandinavian countries and the Russian Federation much remains to be done to secure respect for and recognition of the individual and collective human rights of the indigenous peoples.

4. Although Arctic indigenous peoples are not all at the same level of development and security in relation to their rights to lands, territories and resources, they have made serious inroads towards the reconceptualization of their relations with the States within which they reside. The synergy generated by human rights standard-setting and indigenous advocacy has centred on their status as the rightful owners of lands and resources in the Arctic.

5. Indeed, many Arctic indigenous peoples, through successful efforts to secure their collective human rights, have progressed to a stage where they have an unarguable role and absolute responsibility, in the context of their collective human rights, to take part as direct participants in any and all regimes, mechanisms and matters that affect their lives, lands, territories and resources. There are numerous examples of the collective manifestation of that capacity. To date, the best example is embodied in the provisions of the Labrador Inuit Lands Claims Agreement. That agreement illustrates the genuine nature of the indigenous right of self-determination in all of its interrelated, indivisible and interconnected dimensions.

6. The present study briefly reiterates the relevant articles of the Declaration that engender good practices and are necessary to ensure and enhance indigenous participatory rights and presents an abbreviated survey of conditions of Arctic indigenous peoples. In this regard, three examples and associated good practices are outlined. The conclusions and recommendations strive to respond to the objective of implementing the Declaration's standards and to underscore elements indispensable

[1] General Assembly resolution 61/295, annex.

[2] A high-level intergovernmental forum to promote cooperation, coordination and interaction among the Arctic States.

for the effective and meaningful participation of indigenous peoples throughout the Arctic.

7. In general terms, it is extremely difficult to identify "good practice" owing to the lack of consistency in the equality of the treatment of Arctic indigenous peoples' human rights and fundamental freedoms, including the lack of any comprehensive implementation of the Declaration on the Rights of Indigenous Peoples. If Arctic-rim States had effected more specific, far-reaching steps to implement the Declaration, as well as other relevant international and national human rights instruments, the present study would have much more material to include as "examples of good practice".

8. Recent steps expressly addressing the right of indigenous peoples to participation must also be noted, most significantly, the final report and progress report on the study of *Indigenous peoples and the right to participate in decision-making* prepared by the Expert Mechanism on the Rights of Indigenous Peoples,[3] as well as various reports and documents generated by the United Nations Special Rapporteur on the rights of indigenous peoples.

II. Relevant articles of the United Nations Declaration on the Rights of Indigenous Peoples

9. Article 3 of the United Nations Declaration on the Rights of Indigenous Peoples on self-determination, and in article 4 the right of indigenous peoples to autonomy and self-government, are central to any discussion of participation by and for indigenous peoples, nations and communities. The right of self-determination, as articulated in article 3, provides that: "Indigenous peoples have the right to self-determination". This includes the right to "freely determine their political status" and to "freely pursue their economic, social and cultural development". Article 4 emphasizes that, in exercising the right of self-determination, indigenous peoples have the right to "self-government" of their "internal and local affairs" and the "means for financing" these functions.

10. These two articles succinctly describe the substance of indigenous human rights and the interrelated nature of those rights.[4] Arctic indigenous peoples have demonstrated their commitment through their effective participation in local, regional, national and international affairs, through genuine self-determination and through advances made towards autonomy and self-government in land claim agreements and other constructive arrangements.

11. Articles 25 to 32 of the Declaration embrace related land, territorial and resource rights. Some of these standards have been effected through constitutional or legislative provisions, land claim agreements or other forms of recognition of ownership, control and jurisdiction by Inuit, Sami and other Arctic indigenous

[3] A/HRC/EMRIP/2011/2 and A/HRC/EMRIP/2010/2.

[4] See also the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social, and Cultural Rights; General Assembly resolution 2625 (XXV), the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations; and the Final Act of the Conference on Security and Cooperation in Europe, 1 August 1975.

peoples.[5] It is worth stressing not only the land, territorial and resource provisions of the Declaration but also International Labour Organization Convention No. 169 and the ratification of this legally binding instrument by both Norway (in 1990) and Denmark (in 1996).

12. Articles 18 and 27 of the Declaration reflect direct participation as an element of self-determination that is further reinforced by the right to free, prior and informed consent. The content and manifestation of the right of indigenous peoples to such consent presumes direct participation and engagement in decision-making through their chosen representatives and procedures.

13. Article 40 of the Declaration, on the resolution of conflicts and disputes, bolsters article 18, and articles 7 and 8, concerning physical and mental integrity as well as peace and security, are also integral to participation in processes that may adversely affect indigenous lands, territories and resources. These provisions are interconnected with the issue of militarization addressed in article 30 of the Declaration. Article 29 concentrates on environmental protection while article 32 provides that: indigenous peoples have the right to determine the terms for development of their lands, territories and other resources; States must "consult and cooperate in good faith" with indigenous peoples to obtain their "free and informed consent" prior to approving projects affecting indigenous lands, territories or other resources; and States must provide "effective mechanisms for just and fair redress" for the adverse effects of development and take appropriate measures "to mitigate adverse environmental, economic, social, cultural or spiritual impact".

14. The preambular language addressing sustainable and equitable development and articles 17, 20 and 23 should not be overlooked in relation to Arctic indigenous peoples' participatory rights, specifically in relation to Arctic indigenous peoples, many of whom are not confined within one State borders. Article 36 is significant and requires the effective participation of indigenous peoples in order to ensure that their full range of human rights is adequately safeguarded.

15. Finally, the necessary contextual interpretation of the entire Declaration dictates the need for States to recognize the rights of indigenous peoples to participate in any and all decision-making; such a dictate is especially obvious in the language of articles 12, 27 and 31; which emphasize the duty of States to undertake actions and decisions "in conjunction with the peoples concerned".[6] Paragraph 3 of article 46 implicitly embodies the concept of the right of participation of indigenous peoples — a basic element of good governance.

> The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

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[5] See also Universal Declaration of Human Rights (1948), article 17; International Convention on the Elimination of All Forms of Racial Discrimination (1965), article 5; International Covenant on Civil and Political Rights, article 27; International Labour Organization (ILO) Convention No. 169 on indigenous and tribal peoples (1989), articles 7, 13 (1) and (2), 15, 16 (4) and other relevant articles; relevant instruments in the context of the Conference on Security and Cooperation in Europe; the Convention on Biological Diversity, article 8 (j); the Rio Declaration, principle 22; and the general comments and recommendations issued by various human rights treaty bodies.

[6] In addition to articles 11, 14 and 22.

III. Brief survey of conditions for Arctic indigenous peoples

A. Russian Far East

16. That neither local nor national authorities have provided any substantive response to the appalling conditions facing the approximately 1,700 Siberian Yup'ik in the Russian Far East begs for an overall strategy to secure their interests and rights to their traditional lands, territories and resources.[7] Although the regional government has made some progress, the national Government has paid little attention to substantive recognition of Siberian Yup'ik rights.

17. The Inuit of the Russian Far East as well as all other small areas of the northern part of the Russian Federation face rapid industrialization due to exploitation of non-renewable resources. The Inuit do not have any measure of control over or direct participation in such initiatives. In 2001, the Russian Federation adopted a law to establish permanent legal status for the territories traditionally used and inhabited by indigenous communities, "territories of traditional nature use", which is similar to the former concept of clan lands under the Union of Soviet Socialist Republics. Under the law, indigenous peoples would have a measure of control over such territories, and such lands and environment would be protected from adverse impacts of resource exploitation. Few, if any, of these minimal laws have been implemented to date.

18. The United Nations Special Rapporteur on the rights of indigenous peoples, S. James Anaya, has recommended that, in the Russian Far East, "Special attention should be paid to ensuring the successful implementation of legal guarantees at the local level for all Indigenous communities, such as by establishing reliable ways to monitor implementation and to remedy breaches of the guarantees."[8] He also noted: the need for "certainty to the various laws that concern the right of indigenous peoples and particularly their access to land and resources"; the impact of extractive and other industrial activities; lack of opportunities for political participation, self-government, protection for traditional economies; and substandard conditions for health and education. Given this array of circumstances and lack of commitment on the part of the national Government for direct dialogue with the indigenous peoples, there is a very real possibility that a number of small groups of indigenous peoples of the Russian Far East may disappear.

B. United States of America (Alaska)

19. The Alaska Native Claims Settlement Act of 1971 provided for 45 million acres of land (roughly 12 per cent of the original indigenous territory) and $962.5 million in exchange for lands lost. The lands and assets were placed in the hands of profit-making corporations made up of 12 regional corporations and over 200 village corporations. The regional corporations retain surface and subsurface rights to lands conveyed to them as well as subsurface rights to the lands conveyed to the

[7] Discrimination against small groups of indigenous people in the northern part of the Russian Federation, Siberia and the Russian Far East, 13 June 2008 (CERD/C/RUS/19); non-governmental organization submission to the Human Rights Council, Universal Periodic Review fourth session, 2-13 February 2009; and E/C.12/RUS/5.

[8] A/HRC/15/37/Add.5.

villages. There was no recognition of self-government or self-determination. With regard to examples of good practices of indigenous participatory mechanisms, the corporations are intentionally focused upon economic development and the role they play in the free-market economy, and they have not been characterized by many as examples of good corporate governance or corporate democracy. It is crucial to recognize the right of Alaska Native peoples to self-determination and self-government in order to give full effect to their right to participation in decision-making, including their right to be beneficiaries of their "own institutions", such as the State-chartered corporations under the Alaska Native Claims Settlement Act.

20. The role of Alaska Native indigenous governments, especially in relation to self-determination and self-government in the affairs of their respective members, must be stressed. Many Alaska Native governments have been organized under the terms of the 1934 Indian Reorganization Act, amended in 1936 to apply to Alaska Natives. The most definitive listing of Alaska Native tribes was undertaken by then Assistant Secretary of Indian Affairs, Ada Deer (a woman from the Menominee Indian Tribe in the state of Wisconsin), in 1993. Through this listing, Assistant Secretary Deer attempted to clarify the status, rights and authority of Alaska Native tribes in the face of the Alaska Native Claims Settlement Act. As previously noted, the Act did not address the right of Alaska Native people to self-determination or, in particular, the opportunity to transfer lands under the Act to traditional institutions of indigenous government.

21. The exercise of local control through borough governments chartered by the state of Alaska has met with some success. The North Slope Borough and the Northwest Arctic Borough are two examples of public government with a majority indigenous population that allow for extensive indigenous participation in matters that affect their status, rights and lives. In addition, because of the primary importance of harvesting rights in rural Alaska Native economies, the numerous management and co-management regimes that have effectively functioned and furthered indigenous peoples' participatory mechanism and rights must be acknowledged. In particular, the Indigenous People's Council for Marine Mammals has become one of the key bodies incorporating management and co-management regimes dealing with beluga whales, polar bears, harbour seals, sea otters, Steller sea lions, walruses and other marine mammals. One of the premier examples is the work of the Alaska Eskimo Whaling Commission, organized to safeguard the right of the Alaskan Inuit to hunt bowhead whales within the context of the International Whaling Commission.

22. The Alaska Native Claims Settlement Act purportedly "extinguished" hunting and fishing rights as well as rights to all lands lost. The Act provided that those alive and born on or before 18 December 1971, and having at least one quarter native blood were eligible for enrolment as shareholders in the corporations.

23. In contrast, articles 20 and 33 of the Declaration recognize the right of indigenous peoples to "maintain and develop their political, economic and social systems or institutions" and to "determine their own identity or membership in accordance with their customs and traditions", both of which are important dimensions of the right of self-determination. Furthermore, despite the existence of the 1966 International Covenant on Economic, Social and Cultural Rights, which states that "[i]n no case may a people be deprived of its own means of subsistence",

the Act purportedly "extinguished" aboriginal hunting and fishing rights, essentially the people's "own means of subsistence".

C. Canada

1. James Bay and Northern Quebec Agreement

24. The James Bay and Northern Quebec Agreement of 1975 provided 8,151 sq km for the Inuit and $225 million Canadian dollars to Makivik Corporation on behalf of the Inuit (and to the Cree Regional Authority). In contrast to the Alaska Native Claims Settlement Act, the Inuit in Canada were able to affirm exclusive harvesting rights throughout the lands transferred as well as over an additional 15,000 sq km of land. Provisions for the parties to revisit the original agreement were included, and in 2005, the Partnership Accord was agreed. This provision, which is currently being implemented, recognizes this important modern-day treaty as a living agreement and not one frozen in time.

2. Inuvialuit Final Agreement

25. The Canadian and Inuvialuit governments signed the Inuvialuit Final Agreement in 1984. It provided for 90,600 sq km of land, including 12,980 sq km of subsurface mineral rights and $152 million Canadian dollars. In addition to hunting and fishing, the Inuvialuit have co-management roles in matters related to fisheries, wildlife and environmental impact through various joint boards and councils. Self-determination and self-government were not addressed, instead the Final Agreement generally replicated the model set in the Alaska Native Claims Settlement Act.

26. The major distinctions between the Alaska Native Claims Settlement Act, the James Bay and Northern Quebec Agreement and the Inuvialuit Final Agreement are that the latter included: actual and extensive negotiations through appropriate procedures involving individuals from their representative institutions (rather than merely an act of congress or parliament); a full and formal referendum allowing for free, prior and informed consent of the peoples concerned; and final negotiated instruments that are regarded as agreements rather than a "settlement". Potentially more significant, the agreements affirmatively recognize hunting, fishing and gathering rights, as well as management and co-management. Finally, all of the Canadian agreements are explicitly recognized under section 35 of the Canadian Constitution.[9]

3. Nunavut Land Claims Agreement

27. The Nunavut Land Claims Agreement is the largest aboriginal land claim settlement in Canadian history. When it was signed, legislation was also passed leading to the creation on 1 April 1999 of a new Canadian territory called Nunavut.

[9] Constitution Act, 1982, section 35: (1). The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed; (2) in this Act, "Aboriginal Peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada; (3) for greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired; and (4) notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

The new territory is a public government serving both Inuit and non-Inuit peoples in the form of a unicameral legislative assembly. Provisions for a form of self-government for the Nunavut Inuit were also included in the Nunavut Land Claims Agreement. Inuit have title to approximately 350,000 sq km of land, about 35,000 sq km of which include mineral rights. Inuit and the Government are represented equally in matters concerning wildlife management, resource management and environmental boards. Inuit rights to harvest wildlife on lands and waters throughout the Nunavut settlement area were secured. A scheduled distribution of compensation over a 14-year period totals approximately $1.161 billion Canadian dollars as well as revenue sharing from royalties generated by oil, gas and mineral development on Crown land.

28. Unfortunately the Government of Canada has failed to uphold or respect the terms of the Nunavut Land Claims Agreement. The formal submission of views by the Land Claims Agreement Coalition (Canada) in the context of the consideration of the Universal Periodic Review of Canada by the United Nations Human Rights Council puts the matter in stark contrast to what might be generally deemed cooperative relations between the Government of Canada and the Inuit.[10] Nunavut representatives initiated a lawsuit in December 2006 against the Government of Canada for failure to uphold the terms of this modern-day land claim agreement.[11]

4. Labrador Inuit Land Claims Agreement

29. The Labrador Inuit adopted the Labrador Inuit Land Claims Agreement by referendum in December 2004. According to the Nunatsiavut Government website:

> The Labrador Inuit Land Claims Agreement defines the rights of Labrador Inuit in and to our ancestral lands. It is basically a contract between the Inuit of Labrador (represented by the Labrador Inuit Association), the Government of Canada and the Government of Newfoundland and Labrador. The Labrador Inuit Land Claims Agreement was ratified by the Labrador Inuit; the legislative assembly of Newfoundland and Labrador; and the Parliament of Canada.

By virtue of their years of negotiation, the Labrador Inuit now own 15,800 sq km of land and have traditional use rights (including hunting, fishing, harvesting and social and ceremonial use) to 72,500 sq km of land and 48,690 sq km of sea. This agreement specifies indigenous self-government and, as is the case with other Canadian Inuit agreements, provides for a management and co-management role for Labrador Inuit. It also provides for $130 million Canadian dollars in compensation and an additional $120 million for development of self-government. It is highly significant that this agreement addresses offshore water rights and the adjacent ocean zone extending to the limit of the territorial sea of Canada, as well as specifying Inuit self-government, rather than merely public government or a

[10] Universal Periodic Review of Canada, submission of the Land Claims Agreements Coalition to the United Nations Human Rights Council, 8 September 2008.

[11] See the Nunavut Tunngavik Inc. website at www.tunngavik.com/category/nti-documents/litigation/ for all relevant litigation documents; and Canadian Bar Association website at www.cba.org/nunavut/main/sections_abor/news_2006-12-06.aspx for additional details.

corporate structure. It also sets out "the requirement for a Labrador Inuit Constitution and identifies fundamental matters that it must address".[12]

D. Denmark (Greenland)

30. The 1979 establishment of the Home Rule Government in Greenland was the first step towards local, Greenlandic administration of domestic affairs. The Act establishing home rule recognized rights to natural resources and incorporated the element of consent by both parties in the event of exploitation. Although foreign relations and national security were originally left to Denmark, the Home Rule Government was consistently consulted on matters of direct or indirect impact upon Greenland's interests, legislation of the Council of European Communities and ways for the Home Rule Government to advance its own interests within the European Community.

31. On 25 November 2008, 75.5 per cent of the Greenlandic electorate voted "yes" on a referendum to pursue independence and nationhood.[13] The 2008 referendum resulted from a comprehensive review and study by the Commission on Self-Government, established by the Parliament in 2002. In follow up, the Greenland Self-Government Act was adopted by the Danish Parliament, on 19 May 2009, and by Greenlandic parliament on 12 June 2009. The Act, which has dramatically advanced the status of the public government of Greenland, also makes specific reference to subsurface and offshore oil, gas and mineral rights as well as wide range of other key rights and responsibilities.[14] As a joint action, both Governments have a common responsibility for the Act. Though Greenland remains part of Danish territory, it is significant that the Act makes explicit reference to Greenlanders as a "people" as understood in international law.

32. The future efforts of the Greenlanders to redefine and reconceptualize their relations with others, in this case initially through self-government but potentially through full sovereignty and independence, can clearly be traced to the constant, peaceful and respectful dialogue and engagement of both parties: the peoples of Greenland and the Government of Denmark. Issues as far-ranging as the defence of Greenland and the strategic role of the Thule Air Base to cooperation with the North Atlantic Treaty Organization (NATO) and North Atlantic security to protection of the environment and the 2006 European Union Partnership Agreement, all signal an extraordinary shift towards real autonomy for the people of Greenland. At the same time, however, it must be recognized that this arrangement is not an Inuit-specific one but rather a public government for all people of Greenland, Danish and Inuit alike. Therefore, the Declaration remains relevant in terms of good practices for indigenous participatory rights in addition to Inuit economic, social and cultural rights.

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[12] See www.nunatsiavut.com/index.php/en/lilca for highlights and details of the Labrador Inuit Land Claims Agreement.

[13] Ministry of Foreign Affairs, Denmark news release on referendum: www.ambprag.um.dk/nr/exeres/90374b68-bcca-4139-b538-614533ebcdd1.htm.

[14] Act on Greenland Self-Government, Act No. 473 of 12 June 2009 (English translation) at http://uk.nanoq.gl/sitecore/content/Websites/uk,-d-,nanoq/Emner/Government/~/media/6CF403B6DD954B77BC2C33E9F02E3947.ashx.

E. The Sami of Finland, Norway, the Russian Federation and Sweden

33. As in the case with the Inuit, the Sami inhabit a territory that spans the boundaries of four different States, namely, Finland, Norway, the Russian Federation and Sweden. Each State has similar although inconsistent approaches to affirmatively addressing human rights for the Sami. Sami Parliaments have been established in three Scandinavian countries: in Norway (1984), Sweden (1992) and Finland (1995), but the Sami have had difficulty at the domestic level in gaining full recognition of and respect for their right of self-determination and their respective rights to lands, territories and resources. The Sami Parliamentary Council,[15] created in 2000, coordinates issues among the respective major Sami political institutions throughout Finland, Norway, the Russian Federation and Sweden. Yet, distinctions remain as to how each of the four relevant nation-States has (or has not) responded to Sami status, rights and interests.[16] These distinctions require separate analysis to reflect the conditions facing these distinct Arctic indigenous peoples. Reports specific to the Sami by the United Nations Special Rapporteur on the rights of indigenous peoples should also be consulted due to the limited scope of the present study.

1. Norway

34. The Sami of Norway have made some progress following Sami custom and use in the treatment of their rights to lands, territories and resources under the Finnmark Act of 2005 based on recommendations from the Sami Rights Committee established in 1984. The 2005 Finnmark Act mandates a commission to address Sami land and resource rights, including those to particular "watercourses". To date, little concrete action has been taken to affirm Sami rights to lands, territories and resources under the Finnmark Act and its associated Commission. The need to address Sami reindeer herding rights, as well as rights to marine resources and fisheries in particular, also remain outstanding.

35. Some headway has been made in realizing Sami political rights through the Sami Parliament or the "Sámediggi", which "is an elected, representative assembly for the Sámi in Norway, with representatives chosen by direct elections in 13 constituencies across the country".[17] Although useful to engage the State in matters of concern to the Sami, it is unclear whether this mechanism is reflective of Sami desires or customs, practices and institutions as it seems entirely State prescribed.

2. Sweden

36. The Sami of Sweden have had far less success in attaining any substantive or comprehensive resolution of their economic, social, cultural or political human rights. The modest Sami Parliament Act confines the realm of Sami rights to "achieving a living Sami culture" without highlighting the vital ways and means to do so.[18] In April 2011, the Swedish Supreme Court affirmed that three Sami reindeer herding villages had grazing rights to lands they traditionally used. Except

[15] See www.eng.samer.se/servlet/GetDoc?meta_id=1088.

[16] See A/HRC/15/37/Add.6; A/HRC/18/35/Add.2; and A/HRC/15/37/Add.1.

[17] See website of the Sámediggi at: www.samediggi.no/artikkel.aspx?Aid=884&Mid1=270.

[18] See www.eng.samer.se/servlet/GetDoc?meta_id=1103.

for the Laponia management system of the World Heritage Site discussed below, there has been no satisfactory resolution of greater Sami rights to lands, territories and resources.

37. The Government of Sweden struggles with the differences between Sami nomadic life ways and the State development perspective. Nevertheless, the recognition of Sami reindeer herding as an "occupation", while not adequate in terms of recognizing the interrelated, indivisible, and interconnected human rights of the Sami people, may afford them the opportunity to advance such rights in the face of what appears to be near complete Government control over everything Sami.

3. Finland

38. Although Finnish legislation appears quite progressive, the reality is far different. As is the case with Sweden, the reference to safeguarding language and culture is regarded as the basis for domestic legislation, with little or no recognition of land or other fundamental human rights. Finland does not, however, acknowledge any Sami reindeer herding rights. The most recent commentary on issues related to Sami land rights in Finland comes from the Committee of Ministers of the Council of Europe in relation to implementation of the Framework Convention for the Protection of National Minorities by Finland.[19] The Council specifically found that: there was a lack of coherent government position towards issues related to the Sami. The Council also noted shortfalls in protecting and promoting Sami language, culture and education and limited progress in resolving Sami land rights.

39. The full measure of Sami political rights of self-determination and self-government remain outstanding. The Council of Europe has urged the Government to take rapid measures to unblock the current stalemate and re-establish a constructive dialogue with the Sami Parliament.

4. Russian Federation

40. As is the case with the Inuit of the Russian Far East, the Sami of the Russian Federation are far from realizing their basic human rights, let alone their distinct human rights as indigenous peoples. The small number (approximately 2,132) of Sami on Kola peninsula have had a long struggle simply to clarify their status as a people not to mention difficulty in safeguarding their rights to reindeer husbandry. They have been empowered by and maintained liaison with the Sami Council and are observers at the Sami Parliamentary Council. Nevertheless, as with many other Arctic indigenous peoples, they face dramatic incursions onto their lands and territories at the hand of State-driven initiatives for mining, hydroelectric schemes and other forms of development.

5. Nordic Sami convention

41. An initiative to develop a Nordic Sami convention has been under discussion among the three Sami Parliaments in Finland, Norway and Sweden and representatives of all three States with the objective of finalizing a Sami regional-specific international instrument. The draft convention is designed "to confirm and strengthen such rights for the Sami people as to allow the Sami people to safeguard

[19] See Committee of Ministers of the Council of Europe documents CM(2011)168 and related document ACFC/OP/III(2010)007.

and develop their language, culture, livelihoods and way of life with the least possible interference by national borders". However, it remains to be seen whether this initiative will be effectively advanced. Most recently the United Nations Special Rapporteur urged the States concerned to re-engage in dialogue with the Sami to further this innovative objective.

42. The Sami Council, as an international non-governmental organizations with consultative status with the Economic and Social Council, has played and will continue to play an important role in advancing human rights for the Sami locally, nationally, regionally and internationally dating as far back as 1956. It is a Permanent Participant in the Arctic Council, which is discussed below.

IV. The three participatory mechanisms

A. Arctic Council

43. Inuit have espoused a circumpolar environmental protection plan dating back to the adoption of a resolution at the Inuit Circumpolar Conference in Barrow, Alaska, in 1977, as well as the later meeting of the Conference on "Principles and Elements for a Comprehensive Arctic Policy". The effort crystallized in 1991 when the "Arctic eight" adopted the Arctic Environmental Protection Strategy, followed in 1996 by the establishment of the Arctic Council, a multilateral declaration to further international cooperation concerning environmental protection and sustainable development in the Arctic.

44. The Arctic as the traditional homeland of both Inuit and Sami, affords them a seat at the table. This was done through the designation of "Permanent Participant" status within the Arctic Council.[20] The Sami and Inuit as well as four other indigenous organizations participate directly with the "Arctic eight" States in the deliberations and work of the Arctic Council. The Council's rules of procedure[21] ensure extensive consultation with the Permanent Participants and much of the work of the Council is undertaken on a consensus basis between State representatives and the Permanent Participants.

45. The Declaration and, more importantly, the substantial gains that indigenous peoples have made in securing the legitimate, collective right of self-determination and self-government combined with rights, responsibility and authority over vast territories, lend urgency to the need to strengthen their status and role within the Arctic Council by upgrading their role from consultative status to voting members. The fact that issues related to international peace and security, in particular the military activities of the Arctic-rim States, are not on the table emphasizes the need to address the full array of indigenous peoples' political, economic, social and cultural rights in an interrelated, indivisible fashion. Furthermore, the "Arctic five" (coastal States) have held extensive multilateral dialogues that have not included the

[20] The initial organizations designated as Permanent Participants included the Inuit Circumpolar Council, the Sami Council and the Russian Arctic Indigenous Peoples of the North. There are now three additional organizations involved, including the Arctic Athabascan Council, the *Gwich'in Council International* and the Aleut International Association.

[21] See www.arctic-council.org.

Arctic Council Permanent Participants, which may have serious implications for Arctic indigenous peoples.

B. Circumpolar Inuit Declaration on Resource Development Principles in Inuit Nunaat

46. In 2010, the General Assembly of the Inuit Circumpolar Council in Nuuk, Greenland, held a discussion on extractive industries and, in particular, non-renewable resource development throughout the Inuit homelands. The delegates to that meeting decided as a matter of urgency, to plan and facilitate an Inuit leaders' summit on resource development with the aim of developing a common circumpolar Inuit position on environmental, economic, social and cultural assessment processes. The Council successfully organized the summit in February 2011 and released the Circumpolar Inuit Declaration on Resource Development Principles in Inuit Nunaat on 11 May 2011.

47. That Declaration makes reference to the Arctic Sovereignty Declaration that Inuit leaders adopted in April 2009. The 2011 document asserts that those who face the greatest and longest-lasting impacts must have the greatest opportunities, and a primary place in decision-making concerning non-renewable resource development in Inuit Nunaat or the Inuit homeland. The 2011 Declaration also underscores the United Nations Declaration on the Rights of Indigenous Peoples and affirms that: "Partnerships must include the meaningful engagement and active participation of Inuit in local communities who are most directly affected by resource development in Inuit Nunaat", noting that there is no free-standing or unqualified "right" to proceed with non-renewable resource development in Inuit Nunaat.

C. The Laponian World Heritage Site

48. The Laponian area is a mixed World Heritage Site in northern Sweden with a formal regime established to ensure a direct role for the Sami peoples in the conservation and management of 9,400 sq km of national parks and nature reserves. The Sami of the region have both management and co-management roles (with local, regional and national Swedish authorities) of this United Nations Educational, Scientific and Cultural Organization site where both the natural features and the Sami reindeer herding culture are protected.[22] In the light of the strong Swedish bias towards emphasizing natural and geological concerns over Sami cultural rights, practices and customs, the final result did not come easily and required assertive action on the part of the Sami peoples to advance their rights and interests.

49. Through such a designation, Sami reindeer herding and its role in shaping the landscape and maintaining biological diversity has been underscored. Sami cultural and spiritual connections to the land remain strong and are reinforced by the distinct Sami role in the overall management of the World Heritage Site.

50. The new World Heritage Site management organization that was launched in 2011 included local Sami principles that effectively influence Laponia management

[22] The official 1996 Committee determination stated among other matters that: "The site has been occupied continuously by the Sami people since prehistoric times, is of the last and unquestionably largest and best preserved examples of an area of transhumance".

structure and ensure protection of Sami cultural values, associated historical sites and the reindeer herding industry.

51. Consensus decision-making has also become the common working method. The non-profit association, *Laponiatjuottjudus*, stresses the importance of respect, open communication and ongoing dialogue among all the actors as well as all other communications with the broader local community. Local participation is reinforced through public deliberation (*rádedibme*) held at least twice a year, enabling local residents, entrepreneurs, organizations and other parties to meet, discuss and influence the full range of issues concerning the management of Laponia. This progressive historical management reflects both World Heritage values and sustainable, as well as equitable, development.

52. As of 1 January 2012, the official decree of the Government of Sweden took effect, making *Laponiatjuottjudus* responsible and accountable for the management of the area. There is no longer a unilateral mandate for the county administration, and local reindeer-herding Sami no longer have to gain permission from the administration for matters such as building huts or other structures. In recognition of these unique and positive provisions, *Laponiatjuottjudus* was presented with a World Wildlife Federation award for its progressive work to guarantee the effective participation of the local peoples and the emphasis it has placed on communication and collaboration in conservation management.

V. Conclusions and recommendations

A. Conclusions

53. Provisions of the James Bay and Northern Quebec Agreement that allow Inuit to revisit the terms of the agreement and, in particular, those related to self-government and self-determination, provide recognition of this important modern-day treaty as a living agreement.

54. A range of Canadian agreements (James Bay, Labrador and Nunavut) all include: rights of indigenous peoples to expansive territories; exclusive harvesting rights; financial support for implementation; compensation for lands lost; surface and subsurface rights; management and co-management rights and responsibilities; and clear provisions for the right of self-determination and self-government.

55. The Labrador Inuit Land Claims Agreement makes provision for Labrador Inuit-specific rights to "ocean zones" extending out to the territorial sea, which is an important recognition of indigenous economic, social and cultural rights. There is also specific provision of funds for development of self-government of the Labrador Inuit.

56. The Greenland Self-Government Act provides for not only extensive autonomy in domestic affairs but also a substantial role in foreign affairs of the Greenland government, which ensures that there is no false dichotomy attached to a peoples' right of self-determination.

57. The range of examples of Sami parliamentary structures expressly provides for self-identification, recognition of the importance of the Sami language, and the importance of inter-generational rights by allowing for inclusion of Sami

descendents. There has been at least minimal recognition of the importance of Sami reindeer herding as a traditional activity with economic, social, cultural and spiritual elements. The innovative and creative initiative to pursue a Nordic Sami convention should be welcomed and looked upon as an example of proactive efforts by and for indigenous peoples.

58. The inclusion of Arctic indigenous peoples by the Arctic Council allows for extensive consultation, dialogue and partnership between Arctic-rim States and the "Permanent Participants" as well as consensus decision-making.

59. The Inuit Resource Development Declaration emphasizes a number of vital provisions, including but not limited to the importance of those who face the greatest and longest-lasting impacts having a primary place in decision-making; partnership; and recognition that there is no unqualified right to develop non-renewable resources.

60. The Laponia World Heritage Site underscores a range of highly constructive measures and outcomes, including: direct Sami management and co-management; recognition of the importance of Sami reindeer herding; recognition of biological diversity, as well as Sami cultural and spiritual connections to their lands, territories and resources.

61. Every initiative addressed throughout the study highlights the important work of non-governmental organizations, such as the Sami Council and the Inuit Circumpolar Council, to raise awareness at the international level about the crucial matters facing Arctic indigenous peoples.

62. A number of Arctic-rim States have made significant strides in responding to the status, human rights and demands of Arctic indigenous peoples. Additional efforts must be made and substantially more political will needs to be displayed to realize effectively and uniformly the good practices illustrated herein.

B. Recommendations

63. Arctic-rim States should heed the views, conclusions and recommendations expressed by the Progress and Final Report of the Expert Mechanism on the Rights of Indigenous Peoples on the study on indigenous peoples and the right to participate in decision-making.

64. The Government of the Russian Federation is urged to take concrete measures in response to the recommendations contained in the report of the Special Rapporteur on the situation of indigenous peoples in the Russian Federation (A/HRC/15/37/Add.5), in particular, those related to land and resource rights, extractive and other industrial activities, self-government, protection of indigenous economies, and health and education conditions. It should also respond urgently and positively to the issues contained in the parallel reports and United Nations documents registered through the universal periodic review process of the Human Rights Council.

65. The Government of the United States and the indigenous peoples concerned are urged to review the language of the Alaska Native Claims Settlement Act in order to ensure its consistency with that of the United Nations Declaration on the Rights of Indigenous Peoples, specifically in relation to: the right of indigenous

peoples to self-determination, particularly to maintain and develop their political, economic and social systems or institutions of self-government; to determine their own identity or membership in accordance with their customs and to be secure in the enjoyment of their own means of subsistence and development, or for just and fair redress for its impairment; to denounce the policy of "extinguishment" of Alaska Native aboriginal hunting and fishing rights; and to address the outstanding issue of transfer of lands to traditional institutions of the Alaska Native people.

66. The Government of Canada is urged to dispense with the litigation concerning the implementation of the provisions for the creation and functioning of Nunavut as it is inconsistent with the provisions of the United Nations Declaration on the Rights of Indigenous Peoples, in particular the preambular language emphasizing the fact that Member States solemnly proclaimed the Declaration as "a standard of achievement to be pursued in a spirit of partnership and mutual respect".

67. The Government of Greenland should assess the relevant provisions of the Declaration, the Circumpolar Inuit Declaration on Resource Development Principles in Inuit Nunaat and the Laponia management system for purposes of ensuring and upholding a human rights-based approach to renewable and non-renewable resource development, especially in the light of recent exploratory oil, gas and mineral activity. That government should also recognize the distinction between existing decision-making institutions and processes in contrast to indigenous-specific institutions and processes and mechanisms.

68. The Governments of Finland, Norway, the Russian Federation and Sweden are urged to take all necessary measures to address and affirm the rights of the Sami and Inuit to their traditionally owned, occupied or otherwise used or acquired lands, territories and resources consistent with articles 25, 26, 27 and 28 of the Declaration.

69. The Governments of Finland, Norway and Sweden are urged to take concrete measures in response to the recommendations contained in the report of the Special Rapporteur on the situation of the Sami peoples in the Sapmi region of Finland, Norway and Sweden (A/HRC/18/35/Add.2) and in particular, those related to Sami rights to self-determination and lands, waters and natural resources.

70. The same Governments are urged to move away from all measures that have the effect of prescribing the content of the right of self-determination in relation to the respective Sami Parliaments.

71. The Government of Finland is urged to yield to the call of the Council of Europe's Committee of Ministers for finding a solution to the dispute regarding the land rights and self-determination of the Sami peoples.

72. The "Arctic eight" (and the "Arctic five") member States of the Arctic Council are urged to review and upgrade the role of the Permanent Participants from one of a consultative status to one of full voting members, especially in the light of the increased capacity of indigenous peoples and their corresponding rights. The increasing threats to the Arctic environment require real partnership among all concerned, including the original, first inhabitants of this region. In this regard, article 41 of the United Nations Declaration on the Rights of Indigenous Peoples is of particular relevance due to its specific reference to intergovernmental organizations, such as the Arctic Council.

73. The "Arctic eight" States are also urged to consider inclusion of development, as well as military and security, issues in the work and deliberations of the Arctic Council in order to address the full array of indigenous peoples' political, economic, social and cultural rights in an interrelated, indivisible fashion.

74. All Arctic-rim States are urged to take a human rights-based approach for the realization of indigenous peoples' participation in all matters that directly or indirectly affect their status, rights and lives, as well as their lands, territories and resources. The Declaration provides the relevant minimum standards for doing so.

75. All Arctic-rim States should recognize the urgent need for and begin to establish mechanisms for the full, effective and meaningful participatory role of Inuit, Sami and small nations of the northern part of the Russian Federation, consistent with the recognition of the right of self-determination, especially considering that such indigenous peoples are direct stakeholders. Consistent with article 39 of the Declaration, such measures should include financial and technical resources.

76. All Arctic-rim States, consistent with elements of sustainable and equitable development and the right of indigenous peoples to determine their own priorities for development, should guarantee the direct and immediate role of indigenous peoples in defining and determining all forms of Arctic development, in particular with regard to extractive industries.

77. All Arctic-rim indigenous peoples should consider convening a meeting of indigenous peoples in order to discuss the objective of finalizing an indigenous international legal instrument concerning all matters related to Arctic economic, social and cultural development.

78. The United Nations Permanent Forum on Indigenous Issues or a relevant United Nations agency should consider convening an expert group meeting on Arctic development, involving representatives from all Arctic indigenous governments, indigenous non-governmental organizations, national and subnational governments, and that such a gathering be organized to discuss the future of the Arctic, indigenous human rights and Arctic regional-specific issues ranging from, inter alia, the environment to development and sustainable Arctic communities.